

KEITH D. HOLMAN

v.

DEPARTMENT OF THE TREASURY

DOCKET No.

DC07528110121

OPINION AND ORDER

Appellant resigned from his position of supervisory Employee Development Specialist, GS-14, step 7, series 235 with the Internal Revenue Service (IRS), effective September 8, 1979. He accepted a position in the private sector with Diversified Computer Services, Inc. Believing that he was entitled to severance pay, on December 4, 1979, appellant requested it from IRS. He was advised by return correspondence that under the provisions of Section 550.706 of Federal Personnel Manual Supplement 990-1, Book III,¹ that he was not entitled to severance pay inasmuch as his resignation was a voluntary separation. He subsequently appealed the IRS decision claiming, *inter alia*, that he resigned because of a "study" (Organizational and Methods Study) by the Resource Management Division of the IRS which *recommended* (emphasis added) that his position be abolished; hence, his resignation was involuntary. Appellant waived a hearing and the appeal was decided upon the submissions of record.

The presiding official found that appellant's reason for resigning was based upon his conjecture of what might happen in the future, and his subjective evaluation of a situation, rather than any external coercion or duress on the part of the agency. Considering the fact that the appellant received no formal notice from the agency that his position was being abolished, the presiding official found that the appellant's resignation was a voluntary act and, therefore, not an action appealable to the Board. The appeal was dismissed.

In his PFR, appellant reiterates his contentions below that the Board has jurisdiction over his appeal because his resignation was the result of coercion and duress on the part of the agency and, was, therefore, not a voluntary action by appellant.

A resignation at the request of an employee is deemed to be a voluntary action and, therefore, not reviewable by the Board unless it is found to have been coerced. If coercion is proven by the

¹That section reads in pertinent part:

"... An employee who is separated because of resignation is deemed to have been involuntarily separated for purposes of entitlement to severance pay, if he has not declined an offer of an equivalent position. ... when he is separated because of resignation (1) after receiving a specific notice in writing by his agency that he is to be involuntarily separated by removal...."

appellant, such a resignation is tantamount to a removal and, in that case, an appellant may be entitled to appeal such action to the Board under 5 U.S.C. 7701; 5 C.F.R. 752.401. See *Spiegel v. Department of the Army*, 6 MSPB 40 (1980); *Myslik v. Veterans Administration*, 2 MSPB 241 (1980). The appellant has the burden of proof under 5 C.F.R. § 1201.56(a)(2), to establish by objective evidence that his resignation was in fact involuntary. See *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975).

The Organization and Methods Study upon which appellant's claim of involuntary resignation is based merely discussed methods, procedures, feasibility, and alternatives for effecting an internal reorganization within the agency while "recommending" that certain positions be abolished. No management decision was ever issued regarding the implementation of such a proposed reorganization, and management sent no notices to its employees indicating such an implementation, or abolishment of positions. It was merely appellant's own anticipation of such actions by management that led him to seek other employment and voluntarily resign his position with the agency. Thus, there is no evidence of coercion or duress on the part of the agency.

Accordingly, the Board finds that the petition does not meet the criteria for review set forth at 5 C.F.R. § 1201.115 and hereby DENIES the petition.

This is the final order of the Merit Systems Protection Board in this appeal. The initial decision shall become final five days from the date of this order. 5 C.F.R. § 1201.113(b).

Appellant is hereby notified of the right to seek judicial review of the Board's action as specified in 5 U.S.C. § 7703. A petition for judicial review must be filed in the appropriate court no later than thirty (30) days after appellant's receipt of this order.

For the Board:

ROBERT E. TAYLOR,
Secretary.

WASHINGTON, D.C., December 7, 1981